

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CEDRIC CARTER,

Petitioner,

-vs-

Case No. 1:-98-CV-853

BETTY MITCHELL, Warden,

District Judge Thomas M. Rose

Respondent.

Chief Magistrate Judge Michael R. Merz

**ENTRY AND ORDER OVERRULING CEDRIC CARTER'S
OBJECTIONS (Doc. #134) TO CHIEF MAGISTRATE JUDGE MICHAEL
R. MERZ'S REPORT AND RECOMMENDATIONS (Doc. #129);
ADOPTING CHIEF MAGISTRATE JUDGE MERZ'S REPORT AND
RECOMMENDATIONS DENYING CARTER'S PETITION WITH
PREJUDICE AND TERMINATING THIS CASE**

This matter is before the Court pursuant to Petitioner Cedric Carter's ("Carter's")
Objections (doc. #134) to the Report and Recommendations of Chief Magistrate Judge Michael
R. Merz (doc. #129). The Report and Recommendations addresses Carter's Petition for a Writ of
Habeas Corpus on the merits.

The Report and Recommendations was filed on April 19, 2006, and Carter's Objections
thereto were filed on June 17, 2006. A memorandum responding to Carter's objections was filed
by the Warden on June 29, 2006. (Doc. #136.) Carter's Objections are, therefore, ripe for
decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the
District Judge has made a de novo review of the record in this case. Upon said review, the Court
finds that Carter's objections to the Chief Magistrate Judge's Report and Recommendations are

not well-taken, and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations is adopted in its entirety.

In addition, Carter now claims that his "actual innocence" of the death penalty excuses the procedural default of Causes of Action 1, 2,3, 9, 28, 29, 31, 33, 47 and 50 for Ineffective Assistance of Counsel. However, there is no such argument in his brief on the merits or his reply brief.

Also, Carter now claims he has a due process right to effective assistance of counsel on the reopening of the denial of his first application to reopen his appeal which entitles this Court to reach his claims because he did not receive that assistance. However, in making this argument, Carter ignores that the Supreme Court has held that there is no right to appointed counsel beyond the first appeal of right, *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987), and his application to reopen his appeal was beyond his first right of appeal.

Therefore, Carter's Petition for a Writ of Habeas Corpus is dismissed with prejudice. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and ORDERED in Dayton, Ohio, this Tenth day of August, 2006.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record